

**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 5387

DATE RECEIVED: September 4, 2003

DATE ACTIVATED: March 1, 2004

EXPIRATION OF STATUTE OF

LIMITATIONS: September 4, 2008

MUR: 5446

DATE RECEIVED: April 26, 2004

DATE ACTIVATED: September 27, 2004

EXPIRATION OF STATUTE OF

LIMITATIONS: September 4, 2008

COMPLAINANT:

Democratic Party of Wisconsin

RESPONDENTS:

MUR: 5387

Welch for Wisconsin and John J. Hiller, as treasurer  
Citizens for Welch and Richard J. Rathjen, as treasurer  
Senator Robert T. Welch

MUR 5446:

Welch for Wisconsin and John J. Hiller, as treasurer  
Citizens for Welch and Richard J. Rathjen, as treasurer  
Senator Robert T. Welch

Jeanne Welch

Republican Party of Wisconsin and Buck Shilling,  
as treasurer

Gateway Ventures

Phil Prange

RELEVANT STATUTES:

2 U.S.C. § 441i(e)

2 U.S.C. § 441i(f)

2 U.S.C. § 431(20)(A)(iii)

11 C.F.R. § 300.63

11 C.F.R. § 300.70

11 C.F.R. § 300.71

11 C.F.R. § 300.72

11 C.F.R. § 100.24(b)(3)

11 C.F.R. § 110.3(d)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

**I. INTRODUCTION**

These matters, both initiated by the same Complainant, primarily involve allegations that Robert T. Welch, a sitting Wisconsin State Senator and United States Senate candidate in 2003 - 2004, violated the Federal Election Campaign Act of 1971, as amended, ("the Act") by using nonfederal funds from his state campaign account for payments made in connection with his candidacy for the Republican nomination for one of Wisconsin's United States Senate seats.<sup>1</sup> Complainant also alleges that three impermissible transfers were made from the state campaign committee to the federal committee: two through direct transfers from the state committee, and one through a contribution from Welch's wife.

Welch, his state campaign committee, Citizens for Welch ("the state committee"), his principal federal campaign committee, Welch for Wisconsin ("the federal committee"), and their respective treasurers (collectively "Welch Respondents") were each named as respondents in both matters. Each designated the same counsel and filed a collective response to each complaint. Additionally, Jeanne Welch was named as a respondent in MUR 5446, and she joined in the Welch Respondents' response to MUR 5446. Gateway Ventures and its consultant, Phil Prange ("collectively Gateway"), and the Republican Party of Wisconsin were also named as respondents in MUR 5446. Gateway submitted a separate response to the complaint through its own counsel, as did the Republican Party of Wisconsin.

---

<sup>1</sup> The Republican primary was held on September 14, 2004 and Welch did not receive the Republican nomination

1 The available information indicates that, with the exception of the \$2,000 direct transfer  
2 noted below, the nonfederal funds (i.e. funds that were not subject to the limitations,  
3 prohibitions, and reporting requirements of the Act) spent by the state committee were not in  
4 connection with Welch's United States Senate candidacy and that most of the funds were spent  
5 solely in connection with obligations incurred during his prior state candidacy.<sup>2</sup> See 2 U.S.C. §  
6 441i(e)(1). In addition, the available information shows that Welch's state committee did not  
7 improperly transfer funds to the federal committee through a contribution from Jeanne Welch.  
8 However, the information does show that Welch's state committee impermissibly transferred  
9 \$2,000 directly to the federal committee, which was refunded at about the same time the MUR  
10 5446 complaint was filed. See 11 C.F.R. § 110.3(d) Each of the allegations contained in the  
11 complaints, and this Office's recommendations regarding each, are discussed in this Report.

## 12 II. FACTUAL BACKGROUND

13 Robert T. Welch has been a sitting Wisconsin State Senator for Wisconsin's 14<sup>th</sup> District  
14 since 1995. Welch serves as Vice-Chairman of the Wisconsin Legislature's Joint Finance  
15 Committee. The Joint Finance Committee is responsible for drafting the state's budget and  
16 presenting it to the entire legislature. On April 16, 2003, Welch and three other committee  
17 members proposed a provision to the budget that mandated a three-year statewide freeze on  
18 property taxes. Welch MUR 5387 Resp. at 2. After publicly proposing the tax-freeze, Welch  
19 formally introduced the provision in the Legislature by proposing an amendment to the state  
20 budget. On June 18, 2003, the Wisconsin state legislature approved a state budget that included  
21 a provision mandating a three-year statewide freeze on property taxes. On July 24, 2003,

---

<sup>2</sup> The events discussed in this Report occurred after the effective date of BCRA and its corresponding regulations. Therefore, this Report analyzes the relevant portions of the Act and its corresponding regulations, including those amendments implemented by BCRA, Pub. L. No. 107-155, and those regulations promulgated to implement the BCRA amendments.

1 Wisconsin Governor Jim Doyle signed the budget, but used his partial veto power to veto certain  
2 provisions of the budget, including the provision mandating a three-year property tax freeze.  
3 Supporters of the tax freeze, including Welch, challenged the Governor's veto and the  
4 Legislature scheduled a vote on the Governor's veto of the tax-freeze provision for August 12,  
5 2003.<sup>3</sup>

6 Up until that time, Welch appears to have been actively raising funds for a campaign to  
7 fund his re-election to state office in 2004. For instance, on June 9, 2003, Welch held a  
8 fundraiser for his state committee at the Foxfire on the Green in Waupaca, Wisconsin. However,  
9 on July 24, 2003, Senator Welch filed a Statement of Candidacy for the Republican primary race  
10 for Wisconsin's 2004 United States Senate race. Welch designated Welch for Wisconsin as his  
11 principal campaign committee, with John J. Hiller as its treasurer.

12 Welch continued to fulfill his duties as State Senator as he launched his federal  
13 candidacy. For instance, as a sponsor of the tax freeze, Welch led efforts to override the  
14 Governor's veto of the tax freeze. Welch prepared two advertisements asking voters to help  
15 support the veto override effort by visiting the website [taxfreeze.org](http://taxfreeze.org). The website encouraged  
16 them to ask their legislators to vote for the override.<sup>4</sup> See Welch MUR 5387 Resp at 2. The text  
17 of the two advertisements, was as follows,

18 "I'm Wisconsin Senator Bob Welch. Republicans passed a property tax freeze  
19 Governor Doyle vetoed the freeze. You can help override that veto visit tax  
20 freeze.org. Paid for by Citizens for Welch, Rich Rathjen Treasurer  
21

---

<sup>3</sup> The Wisconsin State Legislature is composed of two houses the Senate and the Assembly. The Legislature can override a governor's veto with the votes of two-thirds of each house.

<sup>4</sup> Although both Houses of Wisconsin's legislature were controlled by the Republicans (18 of 33 seats in the Senate and 60 of 99 seats in the Assembly), the supporters of the tax-freeze had to gain bipartisan support for the provision in order to get enough votes to override the veto.

1 "Hi folks, I'm Wisconsin Senator Bob Welch. Republicans think your taxes are too high  
2 and passed a three-year property tax freeze. Governor Doyle vetoed the freeze. You can  
3 help override that veto. Find out how at [taxfreeze.org](http://taxfreeze.org). Paid for by Citizens for Welch,  
4 Richard Rathjen, Treasurer."

5  
6 Welch MUR 5387 Resp. at 2-3. The ads ran for a one-week period preceding the vote  
7 attempting to override the Governor's veto.<sup>5</sup> The cost of the advertisements was \$5,000 and was  
8 paid for by Welch's state campaign committee, Citizens for Welch.<sup>6</sup>

9 The payment for these advertisements was only one of several large disbursements that  
10 Welch made from his state committee in the days surrounding the announcement of his federal  
11 candidacy. On July 14, 2003, shortly before he announced his federal candidacy, and July 24,  
12 2003, the day he announced his federal candidacy, Welch's state committee made two large  
13 payments totaling \$33,429.07 to its fundraising consultant, Gateway Ventures. In the month and  
14 a half following the announcement of his federal candidacy, Welch made several additional large  
15 disbursements from his state campaign committee. On July 31, 2003, Welch's state committee  
16 made a payment of \$6,500 to his wife, Jeanne Welch for "Office Management, Consulting". In

---

<sup>5</sup> The website [www.taxfreeze.org](http://www.taxfreeze.org) is not active as of the date of this Report. However, the complaint attached printouts of the content of the site, and this Office was able to view the website prior to it becoming unavailable. The website did not appear to contain any mention of Welch or any other federal candidate. The main page of the site contains a letter from Wisconsin Assembly Speaker John Gard, which discussed the tax freeze. See Welch MUR 5387 Resp. at Ex. B.

<sup>6</sup> Prior to broadcasting the advertisements, Welch sought the approval of the Wisconsin State Board of Elections. After receiving an oral assurance that using funds from his state campaign account did not violate state election laws, Welch sent an e-mail to Executive Director of the board requesting written confirmation of the approval. See Welch MUR 5387 Resp. at Ex. A. The Executive Director approved the expense as a legitimate use of state campaign funds, writing, "The activities you described, publicizing the political website that provides information about a potential legislative override of the Governor's veto of the property tax freeze, meet the political purpose test in the opinion of the Elections Board staff. This makes the expenditure a legitimate use of state campaign funds." *Id.*

Welch subsequently contacted the Commission's information hotline and requested guidance as to the permissibility of the funding of the advertisements pursuant to federal law. Welch MUR 5387 Resp. at 1. According to Welch's response to the complaint, Welch explained the circumstances and read the text of the advertisements to Commission staff and was advised by staff, who cited 11 C.F.R. § 300.72 as providing an exemption for state officials communicating regarding political matters, that the radio advertisements did not appear to have any connection to a federal election. Welch MUR 5387 Resp. at 1.

1 addition, according to its state disclosure reports, on August 29, 2003, Welch's state committee  
2 made a \$9,000 payment to the Republican Party of Wisconsin for use of mailing lists. Finally,  
3 on September 29, 2003 and February 22, 2004, Welch's state committee made two transfers of  
4 \$1,000 each to his federal committee.

5 **III. ANALYSIS**

6 Complainant alleges that disbursements made from Welch's state committee after the  
7 date Welch announced his federal candidacy, including: costs for a statewide radio campaign  
8 regarding the Wisconsin Governor's veto of recent legislation (MUR 5387); payments for  
9 fundraising work performed by Gateway Ventures, lease payments for mailing lists, and catering  
10 costs for a fundraising event (MUR 5446), were made in connection with Welch's federal  
11 candidacy. In addition, Complainant alleges that Welch impermissibly transferred \$1,000  
12 directly from his state campaign account to his federal account, and that a state campaign  
13 committee salary payment to Welch's wife, Jeanne Welch, was improperly used to fund a  
14 subsequent contribution to the federal committee (MUR 5446).

15 Pursuant to 2 U.S.C. § 441i(e)(1)(A), federal candidates may not "solicit, receive, direct,  
16 transfer, or spend funds in connection with an election for federal office, including funds for  
17 federal election activity, unless the funds are subject to the limitations, prohibitions, and  
18 reporting requirements of the Act." In addition, federal candidates may not "solicit, receive,  
19 direct, transfer, or spend funds in connection with any election other than an election for Federal  
20 office or disburse funds in connection with such an election unless the funds are not in excess of  
21 the amounts permitted with respect to contributions to candidates and political committees and  
22 are not from sources prohibited by the Act." 2 U.S.C. § 441i(e)(1)(B) The Act provides an  
23 exception to these limitations for federal candidates who are or were also candidates for State or

1 local office where the solicitation, receipt, or spending is permitted by State law and refers only  
2 to the State or local candidate and his or her opponent(s) for that State or local office. 2 U.S.C. §  
3 441i(e)(2). and 11 C.F.R. § 300.72.

4 Furthermore, 2 U.S.C. § 441i(f) requires State candidates and state officeholders to use  
5 only those funds subject to the limitations, prohibitions, and reporting requirements of the Act  
6 for any "public communication that refers to a clearly identified candidate for Federal office  
7 (regardless of whether a candidate for State or local office is also mentioned or identified) and  
8 that promotes or supports a candidate for that office, or attacks or opposes a candidate for that  
9 office (regardless of whether the communication expressly advocates a vote for or against a  
10 candidate.)"<sup>7</sup> 11 C.F.R. § 300.71.

11 **A. State Committee Disbursements**

12 As a threshold matter, this Office must determine when Welch became a federal  
13 candidate within the meaning of the Act. Senator Welch filed a Statement of Candidacy with the  
14 Commission for the Republican primary race for Wisconsin's 2004 United States Senate race on  
15

---

<sup>7</sup> The term public communication "means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising." 2 U.S.C. § 431(22). Pursuant to 11 C.F.R. § 100.17, the term "clearly identified" means "the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as 'the President,' 'your Congressman,' or 'the incumbent,' or through an unambiguous reference to his or her status as a candidate such as 'the Democratic presidential nominee' or 'the Republican candidate for Senate in the State of Georgia'."

As with the limitations in 2 U.S.C. § 441i(e), the Act provides an exception for state candidates where the funds are spent on communications that are in connection with that state candidate's own candidacy and refers only to the candidate or his or her opponent(s) for that office. 2 U.S.C. § 441i(f)(2)

1 July 24, 2003.<sup>8</sup> Welch designated Welch for Wisconsin as his principal campaign committee,  
2 with John J. Hiller as its treasurer. Welch surpassed the \$5,000 contribution threshold on July  
3 25, 2003, one day after he filed his Statement of Candidacy with the Commission, thereby  
4 making him a federal candidate within the meaning of the Act 2 U.S.C. § 431(2)(A) See  
5 Welch for Wisconsin 2003 October Quarterly, Schedule A.

6 For those disbursements, if any, that were made prior to Welch becoming a federal  
7 candidate, and those disbursements, if any, that were made after Welch became a federal  
8 candidate, but made to fulfill obligations incurred by Welch solely in connection with his state  
9 candidacy prior to becoming a federal candidate, the limitations on federal candidates found at  
10 2 U.S.C. § 4411(e) do not apply. The disbursements at issue in this matter were made from June  
11 through September 2003. This Office will analyze each disbursement to determine whether any  
12 of the respondents violated the Act's provisions concerning the use of nonfederal funds.

13 *1. Radio Advertising Campaign (MUR 5387)*

14 The complaint in MUR 5387 alleges that Wisconsin State Senator Robert T. Welch  
15 violated 2 U.S.C. § 4411 by using funds from his state committee to pay for a radio campaign  
16 featuring himself, that was created and paid for subsequent to his becoming a federal candidate  
17 The content of the advertisements asked Wisconsin citizens to help override the Governor's veto  
18 of recent legislation that mandated a three-year freeze on property taxes in Wisconsin Because

---

<sup>8</sup> Welch stated in his response to MUR 5446 that he was presumably running for re-election to his state senate seat until he decided to run for United States Senate Welch MUR 5446 Resp at § E Section 8 03(1) of the Wisconsin state code prohibits a candidate from appearing on a single ballot for more than one office Because Welch's state senate seat was up for re-election in 2004, Welch was therefore required to choose between running in the Republican primary for re-election to his state senate seat, and running on the same primary ballot for the United States Senate seat Welch chose to vacate his state senate seat at the end of his term in January 2005 and run for federal office Consequently, Welch ceased to be a state candidate on the day that he declared his federal candidacy However, because Welch retained his state senate seat throughout his bid for the Republican nomination to the United States Senate, Welch retained his status as a state officeholder throughout the time period at issue in this matter.



1 these advertisements were created, run, and paid for after Welch became a federal candidate (and  
2 therefore no longer a candidate for state office), but while he remained a state officeholder, it is  
3 necessary to analyze the permissibility of Welch's use of his state committee funds pursuant to  
4 the restrictions of 2 U.S.C. § 4411(e) and (f).

5 The analysis begins by considering whether the disbursements for the radio campaign  
6 were made in connection with a Federal or non-Federal election pursuant to  
7 2 U.S.C. § 4411(e)(1), and were therefore subject to the limitations of 2 U.S.C. § 4411(e)(A)  
8 and/or (B).<sup>9</sup> See AO 2003-20, citing AO 2003-12. The Commission must also consider whether  
9 the limitations on state officeholders found at 2 U.S.C. § 4411(f) make the disbursements  
10 impermissible pursuant to the Act. Each of these questions will be addressed in turn

11 a In Connection With a Federal Election

12 Complainant alleges that the radio advertisements were in connection with Welch's  
13 federal candidacy because they were intended to assist Welch's United States Senate campaign  
14 by building his name recognition throughout the state. Complainant argues that, therefore, the  
15 costs incurred in connection with the radio campaign should have been funded entirely with  
16 federal funds from Welch's federal committee. MUR 5387 Compl at 1

17 As discussed above, federal candidates cannot use soft money to pay for expenditures  
18 made in connection with a federal election. Federal election activity, as defined by  
19 11 C.F.R. § 100.24(b)(3), is a subset of the activities that are considered to be "in connection  
20 with a federal election" 2 U.S.C. § 4411(e)(1)(A). Federal election activity includes, among  
21 other things, "a public communication that refers to a clearly identified candidate for Federal  
22 office, regardless of whether a candidate for State or local election is also mentioned or

---

<sup>9</sup> Because Welch was not a State candidate at the time the advertisements were created, aired, and paid for, it is not necessary to discuss whether the exception of 2 U.S.C. § 4411(e)(2) applies to these disbursements

1 identified, and that promotes or supports, or attacks or opposes any candidate for federal office.

2 This applies whether or not the communication expressly advocates a vote for or against a  
3 Federal candidate.” 2 U.S.C. § 431(20)(A)(iii), 11 C.F.R. § 100.24(b)(3) Accordingly, it is  
4 necessary to determine whether the advertisements constituted public communications, as  
5 defined by 2 U.S.C. § 431(20)(A)(iii), or some other type of federal election activity, or were  
6 otherwise in connection with a federal election. The Commission should find that these radio  
7 advertisements were not in connection with Welch’s federal candidacy for three reasons.

8 First, the advertisements do not appear to constitute public communications, as defined  
9 by 2 U.S.C. § 431(20)(A)(iii). While the radio advertisements in this case do refer to Welch,  
10 they do not identify Welch as a federal candidate, nor do they refer to his federal campaign, or  
11 the campaign of any federal candidate whatsoever. Nor does the website referred to in the radio  
12 advertisements mention Welch or any federal candidate. *See supra* note 5, at 5. Furthermore,  
13 the content of the advertisement and website does not clearly promote or support Welch as a  
14 Senate candidate, or attack or oppose any of his opponents. *Id.* Complainant argues that the  
15 advertisements promote Welch’s federal candidacy by increasing Welch’s name recognition in  
16 parts of the state where he is not well known. However, there is no precedent to support such a  
17 broad interpretation of “promotion” a federal candidate.

18 Second, the Commission has previously concluded that in appropriate circumstances the  
19 use of nonfederal funds to pay for an advertisement mentioning a federal candidate may be  
20 permissible. Specifically, since the effective date of BCRA, the Commission has taken up the  
21 issue of whether a local candidate was required to use federal funds to pay for an advertisement  
22 featuring an endorsement by a federal officeholder. In AO 2003-25, the Commission determined  
23 that Evansville, Indiana mayoral candidate, Jonathan Weinzapfel, was not required to use federal

1 funds to pay for an advertisement featuring an endorsement of him by United States Senator  
2 Evan Bayh. The Commission, in deciding that the use of nonfederal funds was permissible,  
3 concluded that the advertisement did not promote, support, attack or oppose a clearly identified  
4 federal candidate within the meaning of 2 U.S.C. §§ 431(20)(A)(iii) and 441(f), and 11 C.F.R. §  
5 100.24(b)(3). The Commission stated, "under the plain language of the FECA, the mere  
6 identification of an individual who is a Federal candidate does not automatically promote,  
7 support, attack, or oppose that candidate." Similarly, the advertisements at issue in this matter  
8 do not promote, support, attack, or oppose a federal candidate, and therefore, the Commission  
9 should not require that they be paid for with federal funds.

10 Third, it does not appear that the payments for the advertisements were otherwise in  
11 connection with a federal election. The purpose of the advertisements appear, on their face, to be  
12 exactly what The Welch Respondents purport it to be: an effort to obtain enough votes to  
13 override the Governor's veto of the tax freeze provision of the state budget. The response to the  
14 complaint indicates that the campaign ran only in districts whose representatives were undecided  
15 on the override, and only for a one-week period in the weeks preceding the override vote. Welch  
16 MUR 5387 Resp. at 3. Welch's involvement on the tax freeze provision, and more specifically,  
17 the increase in property taxes in Wisconsin, is well documented. Not only did Welch serve as  
18 Vice-Chairman of the Finance Committee, but he also initially proposed the tax freeze  
19 amendment that was the subject of Governor Doyle's veto, and introduced the amendment that  
20 added the tax freeze onto the budget package. As one of the individuals who spearheaded the  
21 fight for the tax freeze, it does not appear unusual that Welch was featured in the advertisements  
22 regarding the override vote. In this regard, the facts of this case are similar to MUR 4687  
23 (*Voinovich, et al.*), where, in a pre-BCRA context, the Commission concluded that the Ohio

1 Governor George Voinovich's activities in support of a ballot measure were not in connection  
2 with a federal election, despite his concurrent status as a federal candidate for U.S. Senate.

3 Accordingly, it does not appear that the payments made to air the radio advertisements  
4 regarding the vote overriding the Governor's veto were in connection with a federal election.  
5 However, it would still be impermissible for Welch to pay for the advertisements with money  
6 that was not subject to the Act's contribution limits and source restrictions if they were in  
7 connection with any election. 2 U.S.C. § 441i(e)(1)(B). Therefore, the analysis will turn to this  
8 issue next.

9 b. In Connection With Any Election

10 The scope of 2 U.S.C. § 441i(e)(1)(B), prohibiting federal candidates from spending  
11 funds for "any election", includes nonfederal elections and elections that are held for a purpose  
12 other than electing a candidate for political office. See AO 2003-12. In this matter, the  
13 advertisements do not appear to have been made in connection with any election whatsoever.

14 The advertisements at issue urge voters to "help override [the tax freeze] veto" by going  
15 to [www.taxfreeze.org](http://www.taxfreeze.org). Once at the website, voters were given information about the issue and  
16 asked to sign a petition addressed to Governor Doyle. The petition stated, in part, "My taxes are  
17 too high already. I cannot afford a property tax increase. I urge you to keep your "no tax  
18 increase" promise and sign the property tax freeze now before you." Based on these facts, there  
19 is no direct connection to any election whatsoever.

20 As noted above, at the time that the advertisements were created and aired, Welch was  
21 not a candidate for state office, he was merely a state officeholder, therefore, the advertisements

1 were not made in connection with a nonfederal election.<sup>10</sup> Furthermore, because the issue is not  
2 one that will be decided by a voter ballot, but rather by a vote of state representatives within the  
3 legislature, it is not properly included within the definition of "any election." Therefore, it does  
4 not appear that the limitations of 2 U.S.C. § 4411(e)(1)(B) are applicable to the facts of this case.

5 For the forgoing reasons, this Office recommends that the Commission find that Welch  
6 did not violate any of the Act's restrictions on the use of nonfederal funds by a federal candidate  
7 by paying for the radio campaign with funds from his state committee. Accordingly, in MUR  
8 5387, this Office recommends that the Commission find no reason to believe that Robert T.  
9 Welch; Welch for Wisconsin and John J. Hiller, as treasurer; and Citizens for Welch and Richard  
10 J. Rathjen, as treasurer, violated 2 U.S.C. § 4411 in connection with the radio advertisements.

11 *2. Fundraising Consultant (MUR 5446)*

12 On July 14, 2003 and July 24, 2003, Welch's state committee made two payments  
13 collectively totaling \$33,429.07 to the fundraising consulting firm, Gateway Ventures. The  
14 complaint alleges that these payments demonstrate that Welch impermissibly used funds from  
15 his state campaign account to pay for fundraising services provided by Gateway Ventures,  
16 through its principal, Phil Prange, in connection with Welch's federal candidacy, thereby  
17 violating 2 U.S.C. § 4411(e). To support its allegation, Complainant points to the date of the  
18 payments (ten days prior to, and the day of, Welch's declaration of his candidacy for the United  
19 States Senate), and a press release stating that Gateway Ventures was assisting Welch with his  
20 federal campaign.

---

<sup>10</sup> The only other individual mentioned in the advertisements, Wisconsin Governor James Doyle, is not up for re-election until November 2006, therefore, the advertisements should not be considered in connection with his election.

Welch's state committee reports indicate that the payments were for services rendered from September 2002 through June 2003, as well as for reimbursement of expenses incurred by Gateway in connection with its fundraising activities on behalf of Welch's prior state candidacy. The Welch Respondents produced a copy of the agreement for services between itself and Gateway Ventures, dated September 1, 2002. Welch MUR 5446 Resp. at Ex. E. The agreement provides for a \$30,000 payment to Gateway Ventures, for fundraising services to be rendered between September 1, 2002 and September 31, 2003, with payment to be provided no later than September 31, 2003. *Id*

The Welch Committee states that the payments at issue were made to fulfill its obligations to Gateway in connection with the work the firm did for Welch's state committee, pointing out that, prior to announcing his federal candidacy on July 24, 2003, Welch remained a candidate for re-election to his state senate seat. The Welch Respondents concede that Gateway Ventures subsequently worked for Welch's federal campaign, however, they state that it was not until August, 25, 2003 that the firm began working for Welch's federal campaign. Gateway Ventures and its consultant Phil Prange, who were also named as respondents in this matter, also submitted a response to the complaint that is consistent with the Welch Respondents' response.

The available information, including the Contract for Services between Gateway Ventures, and the state committee's filed disclosure reports,<sup>11</sup> supports the respondents' contention that the payments at issue were made for services rendered by Gateway Ventures in connection with Welch's prior state candidacy. Whether the activity is analyzed from the point at which the obligation to Gateway was initially incurred (when Welch was not a federal

---

<sup>11</sup> The state disclosure reports do not show any additional payments to Gateway Ventures between September 1, 2002 through the present. This indicates that the payments in question were made in order to fulfill the state committee's obligations pursuant to its September 1, 2002 contract with Gateway Ventures.

1 candidate and therefore the restriction at 2 U.S.C. § 441i(e) does not apply), or from the point at  
2 which the disbursement from the state committee was made to Gateway (when Welch was a  
3 federal candidate, but was spending the funds solely in connection with his prior election for  
4 state office, *see* 2 U.S.C. § 441i(e)(2)), the use of nonfederal funds to make the payment is  
5 permissible.<sup>12</sup> Accordingly, in MUR 5446, this Office recommends that the Commission find no  
6 reason to believe that Robert T. Welch; Welch for Wisconsin and John J. Hiller, as treasurer; and  
7 Citizens for Welch and Richard J. Rathjen, as treasurer, Gateway Ventures, or Phil Prange,  
8 violated 2 U.S.C. § 441i.

9 *3. Mailing Lists (MUR 5446)*

10 According to the state committee's disclosure reports, on August 29, 2003, Welch's state  
11 committee made a \$9,000 payment to the Republican Party of Wisconsin for use of mailing lists  
12 The complaint alleges that the disbursement was made for the purpose of purchasing mailing  
13 lists that must have been used for Welch's federal candidacy, since Welch's state campaign  
14 committee would have no need for such lists once Welch became a federal candidate.

15 Pursuant to 2 U.S.C. § 431(8)(A), a contribution includes "anything of value made by any  
16 person for the purpose of influencing any election for Federal office " This includes in-kind  
17 contributions. If Welch paid for mailing lists with funds from his state committee account and  
18 then allowed his federal campaign to use those lists free of charge, a violation of  
19 2 U.S.C. § 441i(e) would result.

---

<sup>12</sup> Nor do the disbursements violate 2 U.S.C. § 441i(f), which requires that state officeholders and candidates (both of which Welch was at the point the obligation was incurred) use funds that are subject to the limitations, prohibitions, and reporting requirements of the Act for public communications that refer to a clearly identified federal candidate and promote, support, attack or oppose that candidate. The complaint makes no allegations, nor does the record contain any evidence suggesting that Gateway Ventures' fundraising efforts on behalf of Welch's prior state campaigns included such public communications.

1 In response to the complaint, the Welch Respondents and Gateway each state that the  
2 payment was for mailing lists that Gateway used in connection with its fundraising on behalf of  
3 Welch's state campaign from September 1, 2002 through September 31, 2003. Welch explains  
4 that the check for the payment was mistakenly made out to the Republican Party of Wisconsin  
5 because Welch had previously leased mailing list from the Republican Party of Wisconsin.  
6 Welch states that the check was actually given to, and cashed by, Phil Prange, of Gateway  
7 Ventures.<sup>13</sup> The Republican Party of Wisconsin responded to the complaint by denying that they  
8 had received any such payment from Welch, and attached copies of their disclosure reports  
9 showing that no such payment was ever reported.

10 The available information, including the cancelled check cashed by Phil Prange, the  
11 disclosure reports of the Republican Party of Wisconsin demonstrating that no payment from  
12 Welch was ever deposited into their account, as well as the statements contained in the responses  
13 of Gateway Ventures, Phil Prange, the Republican Party of Wisconsin, and the Welch  
14 Respondents, supports the contention that the disbursement at issue was made to Gateway  
15 Ventures in order to reimburse the consulting firm for expenses it incurred in connection with  
16 services provided to Welch during his prior state candidacy.

17 Although the state committee did not disburse the payment until after Welch became a  
18 federal candidate, it is clear the disbursement was made to pay for costs incurred by Welch's  
19 state committee prior to Welch becoming a federal candidate. As with the payments for the  
20 consulting services provided by Gateway Ventures, the use of nonfederal funds to make the  
21 payment is permissible, since the soft money prohibitions of 2 U.S.C. § 4411(e) are not

---

<sup>13</sup> Welch provided the Commission with a copy of the cancelled check showing that Prange cashed the check



1 applicable.<sup>14</sup> Accordingly, in MUR 5446, this Office recommends that the Commission find that  
2 there is no reason to believe that Robert T. Welch; Welch for Wisconsin and John J. Hiller, as  
3 treasurer; and Citizens for Welch and Richard J. Rathjen, as treasurer, or the Republican Party of  
4 Wisconsin and Buck Shilling, as treasurer, violated 2 U.S.C. §§ 441i in connection with the  
5 mailing list payment.

6 *4. Foxfire Fundraising Event (MUR 5446)*

7 On August 4, 2003, Welch's state committee made a payment of \$342.35 to Foxfire on  
8 the Greene, a restaurant in Waupaca, Wisconsin, for costs incurred in connection with a  
9 fundraiser held at the restaurant. Complainant alleges that the fundraiser must be in connection  
10 with the federal campaign because the disbursement from his state campaign committee occurred  
11 after Welch declared his federal candidacy.

12 In response to the complaint, The Welch Respondents state that the fundraiser for which  
13 the disbursement was made was actually held on June 9, 2003, when he was not yet a candidate  
14 for United States Senate. Rather, he was still running as an incumbent for the Wisconsin State  
15 Senate seat he occupied at the time. The Welch Respondents produced a copy of the invoice for  
16 the event, which shows that the event was held on June 9, 2003, as the Welch Respondents  
17 contend. In addition, The Welch Respondents produced a copy of the disclosure reports for  
18 Welch's state committee showing that over 70 contributions were made to Welch's state  
19 committee on June 9, 2003, the date of the fundraiser

20 Although the state committee did not disburse the \$342.35 payment to Foxfire to pay for  
21 the fundraiser until August 4, 2003, it is clear the disbursement at issue was made to pay for

---

<sup>14</sup> See discussion *supra* at pp 14-15. Nor is the state officeholder limitation of 2 U.S.C. § 441i(f) applicable, since the limitation applies only to public communications. See *supra* note 12, at 15.

1 costs incurred prior to Welch becoming a federal candidate. As with the payments to Gateway  
2 discussed above, the use of nonfederal funds to make the payment is permissible, since the soft  
3 money prohibitions of 2 U.S.C. § 441i(e) are not applicable.<sup>15</sup> Accordingly, in MUR 5446, this  
4 Office recommends that the Commission find no reason to believe that Robert T. Welch, Welch  
5 for Wisconsin and John J. Hiller, as treasurer; and Citizens for Welch and Richard J. Rathjen, as  
6 treasurer, violated 2 U.S.C. §§ 441i in connection with Foxfire fundraising event.

7 **B. Transfer of Funds from Federal to Non-Federal Account (MUR 5446)**

8 Welch's state committee made two transfers of \$1,000 each from Welch's state  
9 committee to his federal committee on September 29, 2003 and February 22, 2004, respectively.

10 The complaint alleges that these transfers were impermissible. See MUR 5446 Compl. at 3.

11 Pursuant to 11 C.F.R. § 110.3(d), transfers from a candidate's campaign committee for a  
12 nonfederal election to his principal campaign committee for a federal election are prohibited

13 The Welch Respondents acknowledge that, although they believed the transfers were permissible  
14 at the time they were made, they now understand that the Act prohibits such a transfer, and made  
15 a complete refund from the federal committee to the state committee as soon as they confirmed  
16 with the Commission that such a transfer was impermissible.<sup>16</sup> Accordingly, in MUR 5446, this

17 Office recommends that the Commission find reason to believe that the Welch Respondents  
18 violated 11 C.F.R. § 110.3(d), but, due to the amount involved, and in recognition of the refund,  
19 take no further action other than to send a letter of admonishment

---

<sup>15</sup> See discussion *supra* at pp 14-15. Nor is the state officeholder limitation of 2 U.S.C. § 441i(f) applicable, since the limitation applies only to public communications. See *supra* note 12, at 15.

<sup>16</sup> The Welch Respondents state in their response to the complaint that they erroneously believed the transfers to be permissible pursuant to 11 C.F.R. §§ 100.5(a) and 102.6(a).

**C. Contribution from Jeanne Welch (MUR 5446)**

On July 31, 2003, eight days after Welch filed his Statement of Candidacy for the Republican primary for the United States Senate race, Welch's state committee made a payment of \$6,500 to Welch's wife, Jeanne Welch. Two months later, Jeanne Welch made a \$4,000 payment to Welch's federal committee. Complainant alleges that the \$6,500 payment from Welch's state committee to Jeanne Welch became a contribution in the name of another, pursuant to 2 U.S.C. § 441f, when Ms. Welch made \$4,000 the contributions to Welch's federal committee two months later.

Pursuant to 2 U.S.C. § 441f, "no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept such a contribution made by one person in the name of another person." Therefore, if Welch paid his wife the \$6,500 from his state campaign committee for the purpose of having her make the contributions to Welch's federal committee, the contribution would violate 2 U.S.C. § 441f since it was actually a contribution from Welch's state committee.

Furthermore, pursuant to 11 C.F.R. § 110.3(d), transfers from a candidate's campaign committee for a nonfederal election to his principal campaign committee for a federal election are prohibited. Pursuant to 2 U.S.C. § 441a(a)(8), "all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such a candidate, shall be treated as contributions from such person to such candidate." *See also*

11 C.F.R. § 110.6. Therefore, if Welch paid his wife the \$6,500 from his state campaign committee for the purpose of having her make the contributions to Welch's federal committee,

1 the contribution would be considered an earmarked contribution from Welch's state committee  
2 to his federal committee, in violation of 11 C.F.R. § 110.3(d).

3 In response to the complaint, and in a supplementation of that response (Attachment 1),  
4 Welch states that the \$6,500 payment to his wife was compensation for acting as assistant  
5 treasurer to the state committee, including providing office management, accounting, consulting,  
6 bill payment, and general communication matters. Welch MUR 5446 Resp. at § D. Welch  
7 indicates that, although Ms. Welch "worked tirelessly during the period preceding November 8,  
8 2002, and continuing well into 2003", she had yet to be paid for these services.

9 Ms. Welch was also compensated for services provided to her husband's campaign  
10 during prior election cycles. Although the prior payments appear to be significantly less than the  
11 \$6,500,<sup>17</sup> Welch explains that Ms. Welch has a lesser role in assisting the committee during the  
12 time periods for which those lower payments were provided. Welch states that his wife  
13 increased her role in her husband's campaign from June 2002 through July 2003 by continuing to  
14 act as assistant treasurer, while providing assistance in managing the committee's fundraising  
15 team, maintaining a database of contributors and volunteers. The committee decided to  
16 compensate Ms. Welch \$500 per month for 40 to 50 hours of work, for a total of \$6,500 for the  
17 time period at issue.

18  

---

<sup>17</sup> Ms. Welch was paid \$1,200 in 1996, \$500 in 1998, \$1,500 in 2001, and \$1,200 in 2002. Welch explains that these total were derived by compensating her \$100 to \$200 per month for approximately 10-20 hours of work.

1           Based on the available information, it appears that the payment to Ms. Welch was a bona  
2       fide salary payment and there is no basis for the contention that it was a pretext for making a  
3       transfer to the federal committee. Accordingly, in MUR 5446, this Office recommends that the  
4       Commission find no reason to believe that Robert T. Welch; Welch for Wisconsin and John J.  
5       Hiller, as treasurer; Citizens for Welch and Richard J. Rathjen, as treasurer, and Jeanne Welch  
6       violated any provisions of the Act, or its corresponding regulations in connection with the  
7       payment to Welch's federal committee in the name of Jeanne Welch.

8       **IV. RECOMMENDATIONS**

9           **MUR 5387**

- 10          1. Find no reason to believe that Robert T. Welch, Welch for Wisconsin and John J. Hiller,  
11             as treasurer; and Citizens for Welch and Richard J. Rathjen, as treasurer, violated  
12             2 U.S.C. § 441i;  
13          2. Approve the appropriate letters;  
14          3. Close the file  
15

16           **MUR 5446**

- 17  
18          1. Find no reason to believe that Robert T. Welch; Welch for Wisconsin and John J. Hiller,  
19             as treasurer; and Citizens for Welch and Richard J. Rathjen, as treasurer, violated 2  
20             U.S.C. § 441i;  
21  
22          2. Find no reason to believe that Gateway Ventures, or Phil Prange violated 2 U.S.C. § 441i;  
23  
24          3. Find no reason to believe that the Republican Party of Wisconsin and Buck Shilling, as  
25             treasurer, violated 2 U.S.C. § 441i;  
26  
27          4. Find reason to believe that Robert T. Welch; Welch for Wisconsin and John J. Hiller, as  
28             treasurer; and Citizens for Welch and Richard J. Rathjen, as treasurer, violated  
29             11 C.F.R. § 110.3(d) and take no further action other than to send a letter of  
30             admonishment,  
31  
32          5. Find no reason to believe that Jeanne Welch violated any provision of the Act or its  
33             corresponding regulations;  
34

6. Approve the appropriate letters;  
7. Close the file.

Lawrence M. Norton  
General Counsel

Rhonda J. Vording  
Associate General Counsel

Date 12/7/04

By: Mark Shonkwiler by LAG  
Mark D. Shonkwiler  
Assistant General Counsel

Kathleen M. Guith  
Kathleen M. Guith  
Attorney

Attachment:  
Welch Respondents' Supplemental Response to MUR 5446, dated November 1, 2004